

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-132
19-CR-133

JEREMY NUNWAY,

Defendant.

ORDER DENYING MOTION FOR COMPASSIONATE RELEASE

Jeremy Nunway was charged in the above-referenced matters with one count of being a Felon in Possession of a Firearm and one count of Domestic Assault by Strangulation, respectively. He entered a plea of guilty on September 25, 2019 and was sentenced on December 5, 2019 to 48 months in prison, to be followed by 3 years of supervised release. On September 18, 2020, Nunway filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), citing the Covid-19 pandemic, obesity, PTSD, hypertension, and “a list of other ailments.” 19-CR-132 Dkt. No. 24 at 3 and 19-CR-133 Dkt. No. 25 at 3. On December 2, 2020 Nunway also filed a motion for appointment of counsel. 19-CR-132 at 31 and 19-CR-133 at 29. Nunway filed identical pleadings in both cases, and for future reference, citations will be to the documents filed in 19-CR-132. For the following reasons, both motions in both cases are denied.

Nunway is currently 41 years old and filed a request with the warden seeking home confinement based on the Covid-19 pandemic. The request was denied on August 17, 2020. Dkt. No. 26 at 1.

Nunway is serving his sentence at the United States Penitentiary Canaan in Pennsylvania, a facility with a very low level of Covid-19 exposure. Dkt. No. 26 at 2. Currently there are 2 inmates and 9 staff members infected with the virus and there have been no deaths at the facility. <https://www.bop.gov/coronavirus/index.jsp>. (Last visited 2-17-2021) Although Nunway's conditions include obesity, hypertension, PTSD, and some mental health issues, the hypertension is well controlled in his current environment and both the Government and U.S. Probation opine that Nunway has failed to show extraordinary and compelling reasons for his release. Dkt. 26 at 2; Dkt. No. 29 at 2 and 8. It appears that the Bureau of Prisons is more than able to meet his health care needs. In addition, the BOP has been attempting, with extraordinary care, to control any outbreaks of the COVID-19 virus within its institutions and is moving quickly to obtain vaccines for its staff and to vaccinate high risk inmates. <https://www.bop.gov/coronavirus/index.jsp>.

In light of these facts, Nunway has failed to show the extraordinary and compelling reasons needed to justify a reduction of his sentence under 18 U.S.C. § 3583(c)(1)(A). Moreover, a reduction to time served would be inconsistent with the sentencing factors set forth in 18 U.S.C. § 553(a)(1), given the seriousness of his offense and prior record.

As for the request for counsel, the Court notes that defendants do not have a right to counsel at this stage of a criminal proceeding. Despite the absence of such a right, the Court recognizes that it has authority to recruit counsel for a defendant when it appears counsel is needed to insure full and fair consideration of his claim. Nunway's motion was sent to the Federal Defender for consideration, but representation was declined. In any event, the Court is satisfied that the recruitment of counsel would not change the result and his motion for appointment of counsel in each case is denied.

Given Nunway's age, state of his health conditions, and the nature and seriousness of Nunway's crimes, the Court concludes that this defendant's situation does not constitute extraordinary and compelling reasons for reduction of his sentence. Therefore, Nunway's motion for compassionate release filed in each case should be and hereby is denied.

SO ORDERED at Green Bay, Wisconsin this 3rd day of March, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge